

In the Matter of Merchant Mariner's Document No. Z-285964-D2 and all other Licenses and Documents

Issued to: EMERSON W. NEAL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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EMERSON W. NEAL

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 31 January 1955, an Examiner of the United States Coast Guard at Long Beach, California, suspended Merchant Mariner's Document No. Z-285964-D2 issued to Emerson W. Neal upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as a fireman-watertender on board the American SS MARINE SNAPPER under authority of the document above described, on or about 24 December 1954, he wrongfully failed to obey an order of the First Assistant Engineer to leave the engine room (First Specification); and he wrongfully assaulted and battered a superior officer, the First Assistant Engineer, on or about 24 December 1954 (Second Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by nonprofessional counsel of his own choice. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Office made his opening statement and introduced in evidence the testimony of the First Assistant Engineer.

In defense, Appellant offered in evidence his sworn testimony and that of the oiler who was on watch in the engine room at the time of the alleged offenses. Appellant stated that the First Assistant Engineer told Appellant he was relieved, told Appellant to get out of the engine room and shoved him three times but not hard enough to hurt Appellant or cause him to lose his balance; Appellant thought that the First Assistant was reaching for a weapon when he put his hand in his pocket; Appellant was in fear so he struck the First Assistant in the face; the First Assistant fell down from the force of the blows; the First Assistant did not attempt to strike Appellant; the First Assistant had said he wanted to get Appellant in trouble by logging him; and the First Assistant had no right to give orders to Appellant since the Third Assistant was in charge of the watch in the engine room.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and

conclusions, the Examiner announced his decision and concluded that the charge and two specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-285964-D2, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of nine months - three months' outright suspension and six months' suspension on probation until twelve months after the termination of the outright suspension.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 24 December 1954, Appellant was serving as a fireman-watertender on board the American SS MARINE SNAPPER and acting under authority of his Merchant Mariner's Document No. Z-285964-D2.

Shortly after midnight on this date, the ship was preparing to get underway from a dock at Brooklyn, New York. the regular 0000 to 0400 engine room watch consisted of the Third Assistant Engineer, an oiler and Appellant. It was customary for the First Assistant Engineer to act in an over-all supervisory capacity in the engine room while the ship was maneuvering after getting underway.

When the First Assistant entered the engine room, appellant was in a crouched position working on certain valves. The First Assistant, thinking that Appellant was intoxicated, ordered him out of the engine room and gave him a slight shove. Appellant stood up and demanded an explanation of the order. The First Assistant repeated the order followed by another slight shove and then placed his right hand in his trouser pocket where there was a flashlight. Appellant struck the First Assistant on his right wrist. The First Assistant took his hand out of his pocket and stood with his hands at his sides while Appellant struck the First Assistant in the face two or three times. The First Assistant did not at any time attempt to strike Appellant. The force of the blows caused the First Assistant to fall to the floor plates. Appellant would not leave the engine room until he was ordered to do so by the Chief Engineer. The First Assistant suffered a severe bruise under his left eye.

There is no record of prior action having been taken against Appellant except a three months' suspension in 1945 for absence without leave.

Appellant has been shipping, seemingly without incident, on temporary documents since the Examiner's decision was rendered on 31 January 1955.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant has not added any contentions other than those which he presented in his testimony at the hearing. The gist of his defense is that the First Assistant did not have the authority to order Appellant out of the engine room and Appellant acted in self-defense when he struck the First Assistant.

OPINION

The discipline required on ships demands that seamen obey promptly all lawful orders of their superior officers. The order given to Appellant was a lawful one regardless of whether it was justified. Hence, Appellant was obligated to obey the order. He had the immediate recourse of presenting himself to the Chief Engineer and the Master in order that they be given the opportunity to determine the propriety of the order based on Appellant's condition of intoxication or sobriety. Appellant did not act within his rights when he persisted in his refusal to obey the order of the First Assistant Engineer regardless of the capacity in which the latter was acting at the time. There is no evidence other than Appellant's testimony to support his claim that the First Assistant wanted to get Appellant in trouble.

Concerning the Second Specification, the facts do not disclose any element of self-defense. Appellant was not in reasonable fear of bodily harm as a result of the two slight shoves by the First Assistant. Appellant retaliated with much greater force and knocked down the First Assistant when he had his hands at his sides in a defenseless position.

In view of Appellant's good record both before and after these two offenses, the order will be modified to a probationary suspension. This action will be taken also because of such mitigating circumstances as the provocation caused by the original physical force used against Appellant and the absence of adequate evidence to show that Appellant was, in fact, unfit to perform his duties.

ORDER

The order of the Examiner dated at Long Beach, California, on 31 January 1955 is MODIFIED to provide for a nine (9) months' suspension on probation for twelve (12) months from 31 January 1955.

As so MODIFIED, said order is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 31st day of May, 1956.